

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ERROL ANTHONY BENNETT,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-07-275-M
)	
ALBERTO GONZALES, <i>et al.</i> ,)	
)	
Respondents.)	

REPORT AND RECOMMENDATION

Mr. Bennett seeks federal habeas relief based on his continued detention by the Immigration and Customs Enforcement office. But officials removed Mr. Bennett to Jamaica during the pendency of this action and the Respondents move for dismissal based on mootness. The Court should grant the motion to dismiss.

“Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction.” *McClendon v. City of Albuquerque*, 100 F.3d 863, 867 (10th Cir. 1996). An action becomes moot when the court cannot grant “any effectual relief whatever” to a prevailing party. *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992).

Mr. Bennett challenges his continued detention and requests release. In support of the dismissal request,¹ the Respondents have filed documents reflecting Mr. Bennett’s removal to Jamaica. Because the Petitioner has been removed, the desired relief is no longer available


¹ Mr. Bennett has not responded to the Respondents’ request for dismissal and his deadline expired eleven days ago. *See* Order (Apr. 24, 2007).

and the Court should dismiss the action as moot. *See Ferry v. Gonzales*, 457 F.3d 1117, 1132 (10th Cir. 2006) (alien's habeas challenge to legality of detention was deemed moot following the execution of a removal order).

The Petitioner can object to this report and recommendation. To do so, Mr. Bennett must file an objection with the Clerk of this Court. The deadline for objections is June 11, 2007. *See* W.D. Okla. LCvR 72.1(a). The failure to timely object would foreclose appellate review of the suggested ruling. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

The referral is terminated.

Entered this 22nd day of May, 2007.



Robert E. Bacharach
United States Magistrate Judge